IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1218 of 1993

K.Gnanaprakasom Nadar (died)
L.Rs.
1. Muthu
2. G.Varuvel
3. G.Rajayyan
4. G.Nallathampy
5. G.Parvathi
(cause title accepted vide
order dt.16.9.1993 in
CMP 12093/93) .. Appellants

-Vs-

1. Ayyappan Asari
2. Vikraman Nair
3. Kuttappan Nair
4. Krishnakutty
5. Ponnamma Pillai .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Padmanabhapuram, in A.S.No.41 of 1992 dated 21.12.1992 confirming the judgment and decree of the Additional District Munsif, Padmanabhapuram dated 4.2.1992 made in O.S.No.920 of 1988.

!For Appellants : Mr.Godwin

^For Respondents : Mrs.Anandavalli for RR1 & 2
No appearance - RR3, 4 & 5

:JUDGMENT

This second appeal has been brought forth by the plaintiff in a suit for partition and for demarcation of the property, aggrieved over the judgment of the learned Subordinate Judge, Padmanabhapuram, made in A.S.No.41 of 1992 wherein the judgment of dismissal by the trial Court was affirmed.
2. The following facts are noticed in the pleadings of the parties:
The plaintiff, who was originally the sole appellant before this Court, sought for the relief of partition in respect of his 14 cents of land described in the plaint Schedule and for demarcation of the said area of land

and to put up surrounding boundaries and survey stones, alleging that he purchased 10 cents from one Raghava Asari and 4 cents from one Thavasi Asari, both on 3.7.1975, by two registered sale deeds; that he was in possession of the said 14 cents; that there is no demarcating boundary for the said area; that in view of the same, there was dispute between the plaintiff and the defendants, and thus, it became necessary to partition the said area, and demarcation should be done in that regard.

3. The defendants 3 to 5 remained ex-parte before the trial Court. The suit was resisted by the defendants 1 and 2 stating that the survey numbers and boundaries for the plaint Schedule property were not correct; that the alleged sale deeds were not genuine; that the vendors of the plaintiff under the sale deed dated 3.7.1975 were entitled to only 3 cents and not 4 cents as alleged by the plaintiff; that the other brothers of the plaintiff's vendors sold their 2 cents to the first defendant, and hence, the plaintiff obtained 3 cents and the first defendant obtained 2 cents, out of five cents; that one Kumaraswamy Asari sold 7 cents to the first defendant under a sale deed dated 1 .11.1975, and thus, the first defendant obtained right, title and possession for an extent of 9 cents; that his property has been demarcated; that further, one Lakshmikutty sold 4 cents to the second defendant under a sale deed dated 19.9.1969, and thus, the second defendant was in possession and enjoyment of 4 cents, which was also separately demarcated; that the vendors of the plaintiffs and the defendants were in possession and enjoyment of lesser area; that the plaintiff was entitled to 13 cents only and not 14 cents as alleged by him; that the plaint Schedule property was lying in three different plots with well defined boundaries; that the plaintiff was not entitled to any relief, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same stating that the plaintiff was not entitled to the relief of either partition or demarcation of the property. Aggrieved, the plaintiff took it on appeal, which was also dismissed by the learned Subordinate Judge, and the said finding is challenged in this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether the Courts below were right in dismissing the suit for partition and demarcation after having held that the plaintiff is entitled to 13 1/3 cents of the property?

(2) Whether the Courts below were justified in dismissing the suit for partition and demarcation when the sale deeds Exs.A1 and A2 had only noted the extent of the property and not any specific boundaries of the extents sold?

(3) Whether the Courts below have failed to see that the actual demarcation is to be at the stage of final decree proceedings and the suit ought not to have been dismissed without passing a preliminary decree?

6. This Court heard the learned Counsel for the appellants and also the learned Counsel for the respondents 1 and 2 on those contentions.

7. The plaintiff claimed ownership to 14 cents of land by way of two sale deeds one for 4 cents and the other for 10 cents. It was contended by the defendants 1 and 2 stating that the plaintiff was entitled only to 13 1/3 cents and not 14 cents as asked by him. Both sides were given sufficient opportunity to put forth documentary evidence in that regard. Both the Courts below, in view of the availability and sufficiency of the documentary evidence, have found that the plaintiff was entitled to 13 1/3 cents. The

learned Counsel, at the time of advancing his arguments on behalf of the appellants, would submit that this appeal is not one challenging the finding of the lower Courts that the plaintiff was entitled to 13 1/3 cents and not 14 cents; but one challenging the denial of demarcation as asked for by the plaintiff. After a careful scrutiny of the available materials, this Court is of the considered opinion that this appeal does not carry any merit or substance.

8. The specific case of the plaintiff was that he was entitled to 14 cents under two sale transactions namely 4 cents and 10 cents respectively, and in respect of this area, abutting the property of the defendants, no demarcation has taken place in the past, and hence, it has got to be done, and he sought for an order of the Court in that regard. It remains to be stated that the plaintiff, who put forth such a case, did not examine himself. But, both the Courts below have pointed out that there was demarcation done properly. At the time of resurvey, an application was made by the plaintiff himself, and demarcation was done, and the property has been accordingly resurveyed. After resurvey, the property, which was originally having Survey No.647/11, was given Survey No.647/11 A1. The plaintiff having been a party to the demarcation by way of an application for the resurvey and having allowed the same to be done, has not challenged the same within the stipulated time, and hence, it has become final.

9. The learned Counsel for the appellants would submit that the plaintiff is entitled to 14 cents of property, and now, he requests for a declaration, and in such circumstances, he is competent to ask for the demarcation at this stage. This Court is unable to countenance such an argument, since it cannot stand the scrutiny of law. Only on the application made by the plaintiff, resurvey was conducted, and a separate survey number namely 647/11 A1 has been given to the property in question, and after a lapse of long time, the plaintiff cannot come forward asking for 14 cents, and thus, by way of declaration, he should not be allowed to get the relief of demarcation again, which, no doubt, would cause prejudice to the interest of the defendants, and hence, the same cannot be allowed. In such circumstances, this Court is unable to see any merit in this appeal, and it is liable to be dismissed.

10. In the result, this second appeal is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Padmanabhapuram
2. The Additional District Munsif
Padmanabhapuram
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/

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